



# THE WAGNER LAW GROUP

## M&A Special Counsel Support

### Our Expertise

While businesses and their counsel generally recognize the complexity involved in mergers and acquisition transactions, matters involving employee benefits, executive compensation, labor, employment and human resources, present unique challenges. These issues range from anticipating and addressing potentially deal-breaking liability risks, to handling diligence efficiently, to smartly addressing pre-closing and post-closing transition periods. The Wagner Law Group offers a veteran team of employee benefits and employment attorneys who regularly provide support and advice - as special counsel - to businesses (and their counsel) with respect merger and acquisition transactions, as well for the purposes of ensuring smooth transitions during and after transactions.

Our reasonable rate structure combines with our deep M&A experience to assure transactional support that is both cost-effective and of the highest quality. Our attorneys are also ever cognizant of, and sensitive to, the often competing financial, employee morale and public image issues that accompany any changes to benefits, pay structures and employer policies and protocol. Specific areas in which The Wagner Law Group provides merger and acquisition advice and support include, with respect to employment, employee benefits and executive compensation:

Specific areas in which The Wagner Law Group provides merger and acquisition advice and support include, with respect to employment, employee benefits and executive compensation:

- Due diligence
- Representations and warranties
- Indemnifications
- Pre-closing transition and retention planning
- Post-closing
- Special issues facing public and private companies – such as securing benefits and business distress/bankruptcy situations



Super Lawyers





## Employee Benefit Specific Issues

- Due diligence on existing employee benefits plans, including compliance audit:
  - Retirement Plans:
    - 401(k) plans
    - Profit sharing plans
    - Defined benefit pension plans and multiemployer (union) plans
    - ESOPs
  - Health and welfare benefit plans:
    - Health plans
    - Dental plans
    - Life and accidental death and dismemberment insurance plans
    - Disability insurance
    - Cafeteria plans
    - Dependent care assistance plans
- Review compatibility of current qualified retirement plan structures and identifying potential complications:
  - Eligibility
  - Contributions
  - Vesting
  - Distributions
  - Coverage and nondiscrimination testing issues
  - Plan investments
  - IRS and DOL audits
- Designing new employee benefit plans for new entity
- Winding down discontinuing employee benefit plans, especially terminating plans in a manner designed to mitigate ERISA fiduciary risks
- Addressing multiemployer plan and underfunding issues
- Identifying and addressing health and welfare benefit plan issues:
  - ACA compliance
  - COBRA
  - HIPAA
- Employee Communications:
  - Employee handbook
  - Summary Plan Descriptions of ERISA plans
  - Retirement plan changes
  - Health and welfare benefit plan changes
  - Fringe benefit changes
  - PTO changes



## Executive Compensation Specific Issues

- Review of existing executive compensation packages and related liabilities:
  - Non-equity based compensation
  - Stock-based compensation
    - Incentive stock option programs
    - Nonqualified stock option programs
    - Stock award plans
    - Phantom stock programs
- Golden parachute calculations and strategic analysis related to risk minimization – and shareholder “cleansing” for private companies
- Change in control issues and severance planning
- “Springing” and other rabbi trust alternatives
- Excise and income tax effects, including 409A
- Designing new retention, transition, earn-out and other executive compensation structures

## Labor, Employment and HR and Specific Issues

- WARN Act Compliance and Planning
- Evaluating collective bargaining agreements, and issues relating to unionized employees
- Identifying and evaluating existing employment law claims, and the exposure to claims involving worker misclassification, wage-hour, and other workplace risks
- Review and comparison of existing employment policies:
  - Vacation
  - Sick
  - Severance
  - Signing bonuses
  - Confidentiality agreements
  - Employment contracts
  - Non-competition agreements and other restrictive covenants
- Review exit interviews for employee engagement purposes
- Review salaries to assure compliance with equal pay laws
- Audit employment demographics for potential diversity and inclusion issues
- Audit for FLSA and employee classification
- Audit employment contracts and NDAs for enforceability
- Audit harassment prevention training history for compliance with state-mandated training



## Relevant Articles

["Deal Breaking M&A Issues Related to Employee Benefit Plans and Executive Compensation"](#) (Wagner Law Alert June 2018)

[M&A Resource Center for Executive Compensation and Benefit Plan Issues](#)

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